

Appl. No.: 10/090,493

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Page 4

REMARKS/ARGUMENTS

This is in response to the final Office Action mailed June 5, 2003, in the above-referenced application. Claims 1-14 are rejected under 35 USC § 103 as unpatentable over the combination of U.S. Patent No. 6,419,946 and U.S. Patent No. 5,985,296. Applicants respectfully traverse this rejection.

The Office states that the comparative data presented in the Rule 132 Declaration is insufficient, arguing in part that test results are not compared under identical conditions. The Office notes that the composition of Example 1 (invention) includes 2% glyceryl stearate citrate and 0.44% retinol cyclodextrin complex, whereas Example 2 (comparative) includes 6.5% glyceryl stearate and 0.19% retinol cyclodextrin complex.

Applicants respectfully submit that the comparative data is persuasive of the patentability of the present invention. Applicants have found that the recited surfactants can unexpectedly significantly improve the stability of a retinoid active agent. As discussed in the application, retinoids are unstable and susceptible to oxidative decay. This instability limits the effectiveness of such compounds and can limit the concentration that can be used in a given application.

The different concentrations of surfactant and active agent in the examples of the Rule 132 Declaration reflect the difficulties associated with the use of retinoids in cosmetic applications. If anything, the different concentrations highlight the unexpected benefits of the present invention. To this end, the example of the invention includes less surfactant than the comparative example. Despite the reduced amount of surfactant, however, the composition of the invention effectively stabilized a greater amount of retinoid active agent than the comparative example. In effect, the comparative data emphasizes the synergistic effect of the recited components; the composition of the invention stabilized higher concentrations of active agent, despite a reduced amount of stabilizing agent.

Applicants respectfully submit that the claimed invention is patentable, even without considering the comparative data. The Office notes "one cannot show nonobviousness by attacking references individually." Yet, the cited art must be considered in its entirety for all that it fairly teaches, which is what Applicants have done.

The '946 patent is directed to nanoemulsions stated to be stable on storage. The '946 patent differentiates nanoemulsions from conventional emulsions and addresses specific